



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2005

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2005-04028

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224307.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all police reports pertaining to the requestor's client and another named individual, as well as a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). The request asks for (1) a specified offense report, (2) all information held by the sheriff's office concerning the requestor's client, and (3) all information held by the

sheriff's office concerning another named individual. A request for information about a specific incident or offense does not require a law enforcement agency to compile an individual's criminal history; therefore, the request for the specified offense report does not implicate privacy as contemplated in *Reporters Committee*, and the sheriff's office may not withhold the report under section 552.101 on that ground. In addition, the requestor has a special right of access to a compilation of the criminal history of its client, to the extent the information exists. See Gov't Code § 552.023(a) (person's authorized representative has special right of access to information otherwise protected from public disclosure by laws intended to protect that person's privacy interests). However, we find that the request for unspecified law enforcement records of the other named individual requires the sheriff's office to compile the criminal history of that individual, and thus the request implicates that individual's right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the sheriff's office maintains law enforcement records depicting the other named individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because some of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You do not indicate that the sheriff's office has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that this information, which we have marked, is confidential pursuant to section 261.201 of the Family Code, and the sheriff's office must withhold

it under section 552.101 of the Government Code.¹ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You assert the remaining information that you have marked under section 552.108 of the Government Code is excepted under that section. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert the remaining information that you have marked under section 552.108 pertains to cases that concluded in results other than convictions or deferred adjudications. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the remaining information you have marked under section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

To conclude, any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, except for the specifically requested offense report, is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. The sheriff's office must also withhold pursuant to section 552.101 of the Government Code the marked information that is confidential under section 261.201 of the Family Code. Finally, with the exception of the basic front page offense and arrest information, the sheriff's office may withhold the remaining information marked under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we do not address your other arguments for exception of the information at issue.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

¹We note that if the Texas Department of Family and Protective Services has created a file on this investigation, a parent of the child may have the statutory right to review that file. See Fam. Code § 261.201(g).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

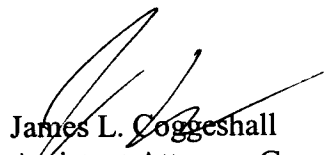
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 224307

Enc. Submitted documents

c: Ms. Lora Llenado, Legal Assistant
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(w/o enclosures)